

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-1301

B  
pls

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA, :  
Appellee, :  
- v - : DOCKET NO. 75 Crim. 44  
RAFAEL FONTANEZ, a/k/a "Lefty", :  
Defendant-Appellant. :  
-----x

APPENDIX

APPEAL FROM A JUDGMENT OF CONVICTION  
RENDERED IN THE UNITED STATES DISTRICT  
COURT, SOUTHERN DISTRICT OF NEW YORK.

KREMER, REISCH, KLAR & LANE  
1501 Franklin Avenue  
Mineola, New York 11501  
Counsel for Appellant



PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

JUDGE WYATT

75 CRIM. 44

TITLE OF CASE

THE UNITED STATES

vs.

1. RAFAEL FONTANEZ-all cts. *Fug*

2. ADOLPHO RIVERA- 1-6

ATTORNEYS

For U. S.:

Thomas M. Fortuin, AUSA.  
791-0942

For Defendant:

R.J. Reisch (Fontanez)  
1501 Franklin Ave.  
Mineola, N.Y.  
742-4949

(12) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed <i>large. 4-9-75</i>	Clerk				
J.S. 3 mailed <i>4-2-75 (651)</i>	Marshal				
Violation <i>4-2-</i>	Docket fee				
<b>Title</b>					
<b>Sec. (see below)</b>					

DATE

PROCEEDINGS

18:1117, 1114 & 1111 Consp. to murder Fed. officer. (Ct. 1)  
18:2114 Attempted robbery of Govt. property. (Ct. 2)  
18:2114&2 Use of dangerous weapon dur. the commission of robbery. (Ct. 3)  
18:111 Assault on Fed. officer & employee. (Ct. 4)  
18:111&2 Use of deadly and dangerous weapon. (Ct. 5)  
18:924(c)(1) Use of firearm to commit a felony. (Ct. 6)  
18:922(h)(1)&924(a) Possess. of firearm while under indictment. (Ct. 7)

1-16-75 Filed indictment. ( superseding 74 Cr 1013 and assigned to Wyatt, J.)

1-27-75 Court directs the entry of a not guilty plea for both deft's (attys present). Hearing held as to deft, Rafael Fontanez. The Court finds the deft. Rafael Fontanez to be insane or otherwise incompetent to stand trial. The Court commits the deft. Rafael Fontanez to the custody of the Attorney General, until he shall be mentally competent to stand trial or he is otherwise discharged according to law. Govt's. motion to sever Rafael Fontanez at trial "Granted". Trial begun as to deft. Adolpho Rivera. Both sides rest. Deft's. motion for a judgment of acquittal as to counts 1 and 6. Decision reserved.....Wyatt, J.

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DATE	PROCEEDINGS
1-28-75	Trial continued. Court grants deft's. motion for a judgment of acquittal as to counts 1 and 6. Summations & charge. Jury finds the deft. guilty on each of counts 2,3,4 & 5. Sentence Mar. 7, 1975, 2:30 P.M. Pre-sentence investigation ordered. Deft. remanded in lieu of bail \$25,000 cash or surety previously fixed on indictment 74 Cr. 1013.....Wyatt,J.
2-5-75	RAFAEL FONTANEZ-Filed Order that deft. having been found mentally incompetent to stand trial, pursuant to 18:4246 he is committed to the custody of the Attorney General for observation & examination to determine whether the deft. is mentally competent to understand the nature of the charges against him & to aid in his own defense and the likelihood of the deft's. becoming competent in the foreseeable future. The Attorney General is to report to the Court within 90 days setting forth its findings and opinion with respect to the deft's. mental competency.....Wyatt,J. Sent 2 Certified Copies to the Marshals 3-5-75
3-10-75	ADOLPHO RIVERA-Filed CJA Form 23, deft's. financial affidavit.
3-7-75	ADOLPHO RIVERA - Filed Judgment & Commitment. (Atty. Present) The Deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of (Cts. 2 & 3 are one offense) Twenty Five (25) Years, on count 3, but so much of the sentence of imprisonment as exceeds Fifteen (15) Years, is suspended & deft. is placed on probation for a period of One (1) Day. (Cts. 4 & 5 are one offense) Ten (10) Years, on count 5, to run concurrently with the sentence imposed on count 3. Wyatt J. Commitment issued 3-11-75
3-11-75	ADOLPHO RIVERA-Filed deft's. notice of appeal from the Judgment of 3-7-75, with MEMO ENDORSED. Deft's. application to proceed on appeal in forma pauperis is granted. SO ORDERED.....Wyatt,J. Mailed notice to Enid K. Gerley, 60 East 8th Street, N.Y.C. & U.S. Attorney's Office.
3-24-75	ADOLPHO RIVERA-Filed commitment & entered return. Deft. delivered to Warden, Federal Detention Headquarters, N.Y.C. on 3-7-75.
3-26-75	ADOLPHO RIVERA- Filed notice of certification & transmittal of the record on Appeal to the U.S.C.A.
Mar 31-75	Filed transcript of record of proceedings dated January 27, 28, 1975.
3-31-75	ADOLPHO RIVERA-Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.
4-14-75	Filed transcript of record of proceedings dated 3-7-75.
4-14-75	ADOLPHO RIVERA-Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.
8-5-75	ADOLPHO RIVERA-Filed true copy of U.S.C.A. mandate with Opinion attached. The judgment of the District Court is affirmed in part and reversed in part and the action is hereby remanded to the District Court for further proceedings in accordance with the opinion of this court. Judgment Entered 8-5-75. Clerk. (mailed notice)

**JUDGE WYATT**

DATE	PROCEEDINGS
8-19-75	Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, U.S. penitentiary, Lewisburg, Pa. Writ Issued, ret. 8-29-75.
8-21-75	Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Bronx House of Detention for Men. Writ issued, ret. 8-29-75.
8-28-75	Filed writ of habeas corpus directed to Warden, U.S. Penitentiary, Lewisburg, Pa. with marshal's return. AUSA Fortuin advised deft. in Bronx House of Detention on state writ. New writ ret. to Bronx to be issued.
8-29-75	ADOLPHO RIVERA-Filed JUDGMENT & COMMITMENT (attorney present)-RESENTENCE-The deft is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of (Counts 4 and 5 are one offense) TEN (10) YEARS. on count 5. Counts 2 and 3 are dismissed.....Wyatt,J Issued commitment 9-3-75.
9-3-75	ADOLPHO RIVERA-Filed deft's. notice of appeal from the judgment of 8-29-75 and MEMO ENDORSED.-Deft's. application to proceed on appeal in forma pauperis is granted.....Wyatt,J. (copies mailed to Adolpho Rivera, 653 River Ave., Bronx, N.Y. 10451 and U.S. Attorney's Office.
9-16-75	ADOLPHO RIVERA-Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.
9-19-75	ADOLPHO RIVERA-Filed true copy of J&C with marshal's return. Forwarded a copy of this commitment to MCC NY for forwarding to institution where deft. is serving original sentence.
9-19-75	ADOLPHO RIVERA-Filed writ of habeas corpus directed to Warden, Bronx House of Detention with marshal's return. Writ satisfied - 8-29-75.....Wyatt,J.
9-25-75	Pre-trial conference held as to deft. Robert Fontanez. Trial to follow U.S.A. -v- Evans 75 Cr. 562 which starts Oct. 28, 1975.....Wyatt,J.
9-30-75	RAFAEL FONTANEZ Closed statistically because (X) defendant ) is ( ) co-defendant ) a ( ) witness ) <del>Examination, Medical</del> In all other respects this case is still pending.
10-8-75	ADOLPHO RIVERA-Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.
10-10-75	RAFAEL FONTANEZ-Filed Govt's. affidavit in support of motion for a psychiatric examination to determine deft's. mental condition at time of conduct charged and his capacity to understand charges against him and to assist in his own defense.
10-10-75	RAFAEL FONTANEZ-Filed ORDER that deft. be examined by Dr. George Hamilton Wilkie a psychiatrist and a report submitted to the Court by 10-15-75. The U.S. Dept. of Justice is directed to pay the Doctor a reasonable fee not to exceed \$150.00.....Wyatt,J.

75 Cr. 44

75

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DATE

PROCEEDINGS

Date  
Judge

- 10-16-75 RAFAEL FONTANEZ-Filed true copy of order filed 2-5-75 with marshal's return. Deft. delivered to custody of the U.S. Marshal, S.D.N.Y. on 10-1-75.
- 10-16-75 RAFAEL FONTANEZ-Filed true copy of order filed 10-10-75 with marshal's return. Received this Order and supplied a copy to the Warden of MCC, New York on 10-10-75.
- 10-29-75 RAFAEL FONTANEZ-Filed Govt's. affidavit for a writ of habeas corpus for Euphemio Vargas directed to Warden, Allenwood Federal Prison Camp, Writ Issued, ret. 11-3-75.
- 10-30-75 RAFAEL FONTANEZ-Filed notice of appearance of R.J. Reisch as attorney for deft.
- 10-30-75 Pre-trial conference held as to deft. Rafael Fontanez. Counts 2 and 3 are dismissed, on deft's. motion.....Wyatt,J.
- 11-06-75 RAFAEL FONTANEZ-Filed deft's. proposed examination of prospective jurors.
- 11-06-75 RAFAEL FONTANEZ-Filed Govt's. proposed examination of prospective jurors and objections to deft's. proposed examination.
- 11-06-75 RAFAEL FONTANEZ-Filed Govt's. requests to charge.
- 11-06-75 RAFAEL FONTANEZ-Filed Govt's. trial memorandum.
- 11-05-75 Hearing held & adjourned to 11-17-75.....Wyatt,J.
- 11-11-75 RAFAEL FONTANEZ-Filed ORDER that deft. be examined by Dr. Anneliese Pontius, a qualified psychiatrist to determine his mental capacity. Deft. is to be examined on 11-12-75 and 11-18-75 at the M.C.C., N.Y.C. and a report is to be submitted/on 11-19-75. The U.S. Dept. of Justice is directed to pay the doctor a reasonable fee not to exceed \$150.00.....Wyatt,J.
- 11-19-75 RAFAEL FONTANEZ-Filed JUDGMENT & COMMITMENT (atty present) This Court after a hearing finds the deft. mentally incompetent. The deft. is hereby committed to the custody of the Attorney General or his authorized representative until the deft. shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. (Pursuant to Title 18, U.S. Code, Section 4246.).....Wyatt,J.  
Issued commitment 11-24-75.
- 11-28-75 Filed Govt's. writ of habeas corpus for Euphemio Vargas with return. Writ satisfied 11-20-75.....Ward,J.
- 12-1-75 ADOLPHO RIVERA-Filed true copy of U.S.C.A. Mandate. The judgment of the District Court is affirmed. Judgment Entered 12-3-75.....Clerk. (mailed notice)
- 12-19-75 Filed transcript of record of proceedings dtd 10-30-75.
- 12-19-75 Filed Judgment and Commitment order, dtd delivered to M.C.C.C. on 11-24-75 by U.S. Marshal.
- 2-11-76 Filed Transcript of Record of Proceedings dated 8-29-76. (ADOLPHO RIVERA)
- 2-18-76 Filed Transcript of record of proceedings dtd 11-19-75.

(Cont'd)

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## JUDGE WYATT

DATE	PROCEEDINGS
03-24-76	ADOLPHO RIVERA - Filed Dfts. affdvt. & notice of motion for reduction of sentence.
03-30-76	Dft. Fontanez (Atty. Present) Pre Trial Conference held. Trial April 12, 1976.
03-31-76	ADOLPHO RIVERA - Filed Memo. End. on motion dtd. 3-24-76. Motion denied....Wya (mailed notice)
04-14-76	RAFAEL FONTANEZ-Filed Deft's. requests to charge.
04-09-76	Dft. Fontanez(Atty. Present) Competency hearing held- The Court finds the defendant competent to stand trial.....Wyatt J.
04-12-76	Dft. Rafael Fontanez(Atty. Present) Trial begun with a jury - Gov't motion to dismiss count 6, Granted.( Trial on counts 1,4,5 & 7..)
04-13-76	Trial Cont'd.
04-14-76	Trial Cont'd. Summations.
04-15-76	Trial Cont'd. Court charges the jury. Jury finds the dft. Guilty on each of counts 4,5,& 7.
04-16-76	Trial Cont'd. Jury deliberation cont'd. Jury disagreement as to Count 1. Sentence May 28,1976. Pre Sent. Invest Ordered. Dft. Cont'd Remanded....Wyatt J.
5-28-76	RAFAEL PONTANEZ a/k/a "LEFTY" - Filed Judgment & Commitment The dft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of THREE YEARS, on count 4. TEN (10) YEARS on sentence on counts 4 & 5 to run concurrently with each other. FIVE(5) YEARS on count 7, sentence on counts 4 & 5 to run consecutively with sentence imposed on count 7. Count 1, is dismissed on motion of dfts. counsel with consent of the Gov't. ....Wyatt J. Issued Commitment 6-3-76
6-9-76	RAFAEL PONTANEZ - Filed Dfts. Notice of Appeal from Judgment dtd. 5/28/76. (mailed notice)
06-09-76	RAFAEL FONTANEZ-Filed commitment & entered return. Deft. delivered to Warden. M.C.C.. N.Y.C. on 5-28-76.
07-02-76	RAFAEL FONTANEZ - Filed Notice of Certification of Record to USCJ

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RGBR

Curr. n-direct

2 J O S E P H P. C U R R A N, called as a witness  
3 by the government, having been first duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WOHL:

7 Q Mr. Curran, how are you employed?

8 A I work as a salesman clerk at a pawn shop in  
9 Daytona Beach, Jessups Pawn Shop.

10 Q Daytona Beach in what state?

11 A In Florida.

12 Q Were you so employed in September of 1972?

13 A I was so employed in September of 1974, yes.

14 Q I ask you, Mr. Curran, to look at Government's  
15 Exhibir 3 which is a revolver sitting on the witness stand in  
16 front of you and I ask you if you have ever seen that re-  
17 volver before.

18 A Yes, I have seen this revolver before and I have  
19 sold this revolver. My recollection is around the 4th  
20 or 5th of December in 1974.

21 Q Where is that you sold it?

22 A I sold it in Florida, in Jessups Pawn Shop in  
23 Dayton, Daytona Beach.

24 MR. WOHL: May we have these exhibits marked  
25 the government's next in order, please.

[60]

1 bsbr Curran-direct  
2 (Government's Exhibits 4, 5 and 6 were  
3 marked for identification.)

4a pm 4 Q I ask you to look at Exhibits 4, 5 and 6,  
5 Mr. Curran, and I ask you if you recognize those documents?

6 A Yes, I recognize all of these documents, and  
7 I initiated and completed Exhibit 4 Id; I apparently comple  
8 Exhibit 5 Id, and I apparently completed Exhibit 6 Id.

9 Q That is, all of them, sir, are at least partly  
10 in your handwriting, is that right?

11 A That is right.

12 Q Are the entries on those documents entries  
13 made in the regular course of business at Jessups Pawn Shop?

14 A Yes, they are, made in the regular course of  
15 business at Jessups Pawn Shop.

16 Q Was it the regular course of business at Jessups  
17 Pawn Shop to make entries such as the ones as appear on  
18 Exhibits 4, 5 and 6 for identification?

19 A Yes, it was.

20 Q Do those documents refer to the sale of the revo  
21 ver which is Government Exhibit 3?

22 A Yes, they do.

23 MR. WOHL: Government offers Exhibits 4, 5  
24 and 6 for identification, your Honor.

25 THE COURT: This proof is offered on the charge

1 bsbr

Curran-direct

[61]

2 in Count 7.

3 MR. WOHL: That is right, your Honor.

4 MR. REISCH: Your Honor, I would object  
5 not on any other basis except that it appears that the  
6 transferee, who I assume the witness will say is the person  
7 to whom the gun was sold, appears to be a Mr. Frank Clark.  
8 There is an indication as to race, there is a B there, which  
9 I believe must indicate black.

10 THE COURT: May I see it?

11 Mr. Curran, I must have misunderstood you.

12 You said that this was a weapon that you had sold in  
13 September, 1974. I thought you said December, too.

14 THE COURT: Will you take another look at it,  
15 because this is what confuses me. because all the dates on  
16 these documents --

17 THE WITNESS: September the 4th,

18 THE COURT: So when you said December --

19 THE WITNESS: I meant to say September.

20 THE COURT: You mean September?

21 THE WITNESS: Excuse me. Yes, sir.

22 THE COURT: I will take them. Overruled.

23 (Government's Exhibits 4, 5 and 6 were received  
24 in evidence.)

25

1 bsbr Curran-direct

2 THE COURT: These are records that the  
3 federal firearms law requires to be kept?

4 THE WITNESS: That is right.

5 THE COURT: I take it Jessups is a licensed  
6 dealer?

7 THE WITNESS: They are, your Honor.

8 THE COURT: Was this sale in Daytona Beach?

9 THE WITNESS: This sale was made in Daytona  
10 Beach.

11 THE COURT: Delivered across the counter  
12 in Daytona Beach.

13 THE WITNESS: After the man completed the gun  
14 form.

15 THE COURT: All right.

16 BY MR.WOHL:

17 Q To whom did you sell the gun marked Exhibit 3?

18 A To Mr. Frank Clark, a colored gentleman.

19 Q Do you see Mr. Clark in court today?

20 A No, I don't.

21 Q Will you look at the gentlemen at the defense  
22 table here. Have you ever seen either of those gentlemen  
23 before?

24 A Never.

25 Q Would you compare the serial number on the gun,

1 bsbr

Curran-direct

2 Exhibit 3, Mr. Curran, with the serial number that appears  
3 on Exhibits 4, 5 and 6, please.

4 A All right.

5 There is a difference in the serial number on the  
6 butt of the gun, different in the sense that the first is  
7 a letter, the letter Q. On the forms that I completed,  
8 I obviously copied that as a double O.

9 MR. RETSCH: I object to what he obviously did.  
10 It's a conclusion.

11 THE COURT: I will permit it. Overruled. Go  
12 ahead, Mr. Curran.

13 THE WITNESS: Well, I copied it as a double O.  
14 The actual number on the gun is a 00, and the remaining  
15 numbers are 55670.

16 Q In light of that difference, can you explain  
17 to the Court and jury how you can tell that the gun,  
18 Exhibit 3, is the gun referred to in the documents, Exhibits  
19 4, 5 and 6?

20 A Yes, I can, because the R.G. Company normally  
21 prefixes --

22 MR. RETSCH: I object to "normally", your  
23 Honor.

24 THE COURT: Overruled. Go ahead.

25 A The company's established procedure is to prefix

1 bsbr Curran-direct

2 the distribution company --

3 MR. REISCH: If i may, I won't do this again,  
4 but just for the purpose of all conclusions about the  
5 R.G. Company, I would like a standing objection.

6 THE COURT: All right. You have a standing  
7 objection. Go ahead. *f*

8 A The letter Q has never -- does not appear  
9 any place in the -- rather, the letter O does not appear  
10 as a designated letter on any of the R & G products, they  
11 use other letters of the alphabet, and this letter is  
12 clearly Q on here now, looking at it, and I might suggest,  
13 for anybody that might want -- if your Honor would like to  
14 look at it, that you are looking at numbers on a dark  
15 background, and the O in this case, with the little faint  
16 line on it, the Q was read by me at the time of sale as a  
17 zero or the letter O.

18 THE COURT: All right.

19 Q Is that weapon one that is normally carried by  
20 your store?

21 A Yes, it is. We carry this line of products.

22 MR. WOHL: No further questions, your  
23 Honor.

24 THE COURT: All right, Mr. Reisch.

25 MR. REISCH: I have no questions of this witness.

T5A

1 RGJW 1 Costanzo - direct  
2 [REDACTED]  
3 MR. REISCH: Once again, your Honor, unless  
4 the Court permits me a standing objection to all of this,  
I don't want to keep on jumping up.  
5 THE COURT: Yes, of course. On the whole  
6 line you can have a standing objection.  
7 THE WITNESS: Could you repeat the question?  
8 (Record read)  
9 A I don't know what you mean by normal.  
10 Q Frequently recurring types of driving  
11 maneuvers.  
12 A Oh, yes. There is pulling into a street,  
backing out of it, making a U-turn, wait for a light to  
change, go through the light and then pull over after you  
go through the light, changing lanes, fast and slow.  
13 Q Mr. Costanzo, I show you Government's  
14 Exhibit 3 and I ask you if you have ever seen that  
15 before.  
16 A Yes, sir.  
17 Q When did you see it for the first time?  
18 A On the night of October 18th.  
19 Q Where was it that you saw it?  
20 A It was given to me by Special Agent Moran.  
21 Q Where?  
22 A At Colonial Avenue and 196th Street after it

1 rgjw 2 Costanzo - direct

2 was seized from the vehicle.

3 Q Did you determine whether it was in a loaded  
4 or unloaded condition?

5 A Yes, I determined it was loaded.

6 Q What did you do with it?

7 A I maintained custody over it until after I  
8 got back to the office and had a chance to unload it.

9 THE COURT: When you got it was it loaded or  
10 unloaded?

11 THE WITNESS: It was loaded, sir. When I  
12 took it back to the office I unloaded it.

13 Q How many rounds were in it?

14 A There were five.

15 Q What did you do with those rounds?

16 A I placed them along with the weapon in what  
17 we call an evidence envelope.

18 MR. WOHL: May we mark this as Government's  
19 Exhibit 3-A, please?

20 (Government's Exhibit 3-A marked for  
21 identification)

22 Q I show you Exhibit 3-A for identification and  
23 I ask you if you can recognize that.

24 A Yes, sir.

25 Q What is that?

1 rgjw 3 Costanzo - direct App. 14

2 A This is the envelope I put the weapon and the

3 five rounds of ammunition in and sealed it up.

4 MR. WOHL: I offer Exhibit 3-A for identifi-

5 cation into evidence.

6 MR. REISCH: Might I have a short voir

7 dire?

8 THE COURT: You may.

9 VOIR DIRE EXAMINATION

XXX 10 BY MR. REISCH:

11 Q When was this outer envelope opened?

12 A Excuse me?

13 Q Did you open the envelope today?

14 A Did I open it?

15 Q Yes.

16 A No.

17 Q You were the one who closed it?

18 A I was the one who closed it, right.

19 Q What did you do after you sealed it?

20 A It was initialed by me, witnessed by Special

21 Agent Castillo, placed into our vault for safekeeping,

22 removed on the 21st and given to Special Agent O'Brien

23 of the Alcohol, Tobacco and Firearms Division.

24 Q The 21st of when?

25 A October.

1 rgjw 4 Costanzo - direct App. 15

2 Q of 1974?

3 A Right.

4 Q And when did you see it again?

5 A Just now.

6 Q So you are unaware of how it became opened?

7 A Right.

8 Q Do you have any independent method of identify-  
9 ing the contents that were contained in here, the bullets?

10 A The bullets? The bullets were placed in the  
11 bag.

12 Q Well, you placed the bullets in the bag and  
13 you sealed it, correct?

14 A Yes.

15 Q And Agent Castillo witnessed it?

16 A Right.

17 Q Then the bag was given to another government  
18 agency, correct?

19 A On the 21st. There should be what we call  
20 a receipt for it.

21 Q I know, but you haven't seen it since you  
22 sealed it and gave it away until today.

23 A Right.

24 Q So you don't of your own independent knowledge  
25 know that the bullets that were contained in it were the

[61]

App. 16

1 rgjw 5 Costanzo - direct/cross

2 same ones that you put in since the seal was broken, is  
3 that correct?

4 A I know that I put the bullets in. As to  
5 what happened to the bullets after that, I don't know,  
6 and to answer your question, I don't know if they are the  
7 same bullets.

8 MR. REISCH: Fine, I object to its inclusion  
9 into evidence. I would ask that same objection be applied  
10 as to the firearms itself.

11 THE COURT: All right, I will take it. The  
12 objection is overruled. Mark it in evidence.

13 (Government's Exhibit 3-A received  
14 in evidence)

15 MR. WOHL: No further questions, your Honor.

16 THE COURT: All right.

17 CROSS EXAMINATION

18 BY MR. REISCH:

19 Q Agent Costanzo, how many cars were on the  
20 surveillance scene in the official government vehicle  
21 that Mr. Fontanez was in?

22 A I would say approximately five or six.

23 Q There were five or six to begin with?

24 A Yes.

25 A And all were driven by experienced government

App. 17  
[109]

T2 am

1 JWJW 1

2 (In open court - jury not present)

3 THE COURT: Suppose I wait in the robing  
4 room.

5 MR. WOHL: All right, your Honor.

6 THE COURT: I am sure, Mr. Wohl, you will do  
7 everything you can to get somebody here.8 MR. WOHL: Yes, your honor. I am sorry for  
9 this delay.

10 (Recess)

11 (In open court - jury not present)

12 THE COURT: All right, Mr. Clerk, get the  
13 jury, please.

14 (Jury present)

15 MR. WOHL: The government calls John O'Brien.

16 J O H N      A .      O ' B R I E N ,      called as  
17 a witness on behalf of the Government, being  
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

XXX

20 BY MR. WOHL:

21 Q Mr. O'Brien, how are you employed?

22 A I am a special agent with the United States  
23 Treasury Department, Bureau of Alcohol, Tobacco and  
24 Firearms.

25 Q How long have you been so employed?

1 jwjw 2 O'Brien - direct [110]

2 A Five years.

3 Q I ask you to look at Government Exhibit 3  
4 in evidence, a revolver, and I ask you if you recognize  
5 that.

6 A Yes, sir, I do.

7 Q How do you recognize it?

8 A I recognize it by my initials which are  
9 etched on the frame of the firearm.

10 Q And did you do that?

11 A Yes, sir, I did.

12 Q When did you see the revolver, Exhibit 3,  
13 for the first time?

14 A On October 21st, 1974.

15 Q From whom did you receive it?

16 A Special Agent Jerry Castillo of the Drug  
17 Enforcement Administration.

18 Q Did you receive anything with it?

19 A Yes, sir, I did.

20 Q What?

21 A A quantity of ammunition. Five rounds of  
22 .38 caliber ammunition.

23 MR. WOHL: I ask that this item be marked  
24 Government's Exhibit 11 for identification.

25 (Government's Exhibit 11 marked for

[111]

1 jw jw 3 O'Brien - direct

2 identification)

3 Q I show you Government's Exhibit 11 and I  
4 ask you if you recognize what that is.

5 A Yes, sir, I do.

6 Q What?

7 A It is five rounds of Browning .38 caliber  
8 ammunition.

9 Q Have you ever seen those rounds before?

10 A Yes, sir, I have.

11 Q When?

12 A I received those rounds when I received the  
13 firearm from Special Agent Castillo.

14 Q How do you recognize those rounds as the same  
15 rounds you received from Agent Castillo?

16 A By the way they are sealed in the evidence  
17 envelope which is affixed to this evidence tag when I  
18 received the firearm.

19 Q Referring to the evidence tag that is  
20 attached to the revolver?

21 A Yes, sir.

22 Q Who put the rounds in the evidence bag that  
23 they are in now?

24 A I did.

25 Q After you received the revolver and rounds

App. 20

1 jwjw 4 O'Brien - direct [112]

2 did you do anything with the revolver?

3 A Yes, sir, I did. On October 23rd, 1974 I  
4 test-fired the firearm.

5 Q Would you describe to the jury what you did?

6 A I loaded the firearm with fire rounds of .38  
7 caliber ammunition and fired it to ascertain whether or  
8 not it was operable.

9 Q And what did you determine?

10 A It was operable.

11 Q And the rounds that were loaded were not the  
12 same rounds you received from Mr. Castillo, is that  
13 right?

14 A No, sir, they were test rounds.

15 MR. WOHL: I offer Government's Exhibit 11  
16 in evidence.

17 I will show it to Mr. Reisch.

18 MR. REISCH: No objection.

19 THE COURT: All right, mark it.

20 (Government's Exhibit 11 received  
21 in evidence)

xxx

22 Q Agent O'Brien, do you know where RG Industries  
23 is located?

24 A Yes, sir, I do.

25 Q Where?

1 jwjw 5 O'Brien - direct

2 A Miami, Florida.

3 MR. WOHL: No further questions.

4 THE COURT: Mr. Reisch?

5 MR. REISCH: I have no questions.

6 THE COURT: All right, you may step down.

7 (Witness excused)

8 MR. WOHL: The government calls Special Agent

9 Steve Moran, your Honor

10 S T E P H E N M O R A N , called as a  
11 witness by the Government, being first duly sworn,  
12 testified as follows:

13 DIRECT EXAMINATION

XXX 14 BY MR. WOHL:

15 Q Mr. Moran, would you look at Government's  
16 Exhibit 3 in evidence, the revolver in front of you?

17 Now, have you ever seen that revolver before?

18 A Yes, I have.

19 Q And how do you recognize it?

20 A This is the revolver I seized on October 18th  
21 from a vehicle which Mr. Fontanez was in.

22 Q And was that -- was Mr. Fontanez in the  
23 vehicle at the time you seized the revolver?

24 A No, Mr. Fontanez had been removed. This  
25 was found underneath the driver's portion of the front

jwjw 17

('ause)

witness by the defendant, being first duly sworn,  
testified as follows:

THE COURT: Just try to keep your voice up,  
Miss Briggs, so that the farthest jurors can hear you.

**DIRECT EXAMINATION**

BY MR. REISCH:

Q Miss Briggs, may I ask you what your occupation is or what your occupation was during the years of 1974 and '75?

A My title was consultant psychometrist and  
consultant psychologist.

## Q Psychometrist?

A An expert in psychological testing.

Q      Would you give us a little background of your education?

A I have a bachelor of arts degree in psychology from the University of Tulsa in 1966, a master of arts degree in clinical psychiatry, University of Tulsa, 1961, and I worked as a school psychologist, as a diagnostician, counselor in the County Guidance Clinic in Oklahoma, and I taught psychology for three years in the Southwest Missouri State University in Springfield.

jwjw 18

Briggs - direct

2 Q During that time you were also employed by  
3 the Springfield Facility?

4 A Yes, I was there for two and a half years.

5 Q Were you there full-time or on a --

6 A Part-time from 16 to 14 hours a week.

7 Q I see.

8 During the same time that you taught at the  
9 University of --

10 A Southwest Missouri University.

11 Q Are you still with that same university?

12 A No, I am in Minneapolis now.

13 Q During the course of your employment at  
14 Springfield did there come a time when you were introduced  
15 in the course of your professional duties and occupation  
16 to Mr. Rafael Fontanez?

17 A Yes, I was.

18 Q And I wonder if you would consult -- do you  
19 see the little tag on that? Identify it for the record.

20 A This?

21 Q Yes.

22 A Defendant's D in evidence.

23 Q Would you consult though?

24 A I have kind of a sore throat.

25 Q I can almost hear you.

1 jw jw 19 Briggs - direct

2 Will you tell us when you first met Mr.  
3 Fontanez?

4           A       I have an interview here dated April 4, 1975  
5           and testing material that same date. That was probably  
6           my first formal connection with him, was when I tested  
7           and interviewed him.

8 Q What was the purpose of the testing that you  
9 administered to Mr. Fontanez?

10           A       I was working in the forensic unit of the  
11          medical center. And the purpose of the forensic unit  
12          was to examine patients who were sent to it by the  
13          Courts to see if they were mentally competent to stand  
14          trial, and in some cases if they were legally responsible  
15          at the time of their crime. This is what we always had  
16          in mind with all our contacts with them.

17                   My particular job was to give him testing,  
18 psychological testing, to evaluate the results of it, to  
19 interview him and to form an opinion as to his mental  
20 state and report on that.

Q Did you administer certain tests to him?

22 A Yes, I did.

Q Could you tell us the names of those tests?

A Full Range Picture-Vocabulary Test, Form A.

25 MR. REISCH: If the Court please, one at a time.

[247]

1 jwjw 20                    Briggs - direct

2                    Q     If you can tell the jury what that is and what  
3     that sort of test entails.

4                    A     The Full Range Picture-Vocabulary Test is sort  
5     of an I.Q. test for people who have difficulty reading.  
6     It doesn't require any reading.

7                    And Mr. Fontanez was unable to perform on the  
8     test, the I.Q. test which we usually give, which does  
9     require reading, so alternately I gave him this one which  
10    is given on a one-to-one basis and gives an I.Q. score.

11                  I gave him the Rotter and Incomplete Sentence  
12    Test. And that is a personality test basically. A  
13    sentence is begun on the test and the person is asked to  
14    complete the sentence however he feels at the time.

15                  And I imagine I had to write -- yes, I had  
16    to write all of Mr. Fontanez' responses because he simply  
17    was not able to -- he wasn't able to write his answers.

18                  Q     Can you tell us in terms the jury can under-  
19    stand what the results of the I.Q. test was?

20                  A     On the Full Range Picture-Vocabulary Test  
21    Mr. Fontanez earned a projected WAIS of less than 70  
22    with a mental age of eleven and a half years.

23                  Q     Can you tell us what WAIS means?

24                  A     That is the Wexler Adult Intelligence Scale.

25                  It is an I.Q. test by which other I.Q. tests

W.M.B.

1 ,wjjw 21

Briggs - direct

2 are judged. I didn't have one available to me to give  
3 to him at that time. But all I.Q. tests are validated  
4 in terms o at this point in terms of how they compare  
5 to the Wechsler I.Q. Test and the Stanford Benet I.Q. Test.  
6 So his result would be equivalent to WAIS I.Q. of less  
7 than 70.

8 When it gets less than 70 on this particular  
9 test there is no given score less than 70. It is in the  
10 mentally retarded range with the mental age of eleven  
11 and a half years.

12 Q In other words, it is your professional  
13 opinion that he is mentally retarded on the basis of that  
14 test?

15 A On the basis of the test he's mentally retarded,  
16 yes.

17 Q What was the nature of the next test?

18 A The Rotten and Incomplete Sentence Test is  
19 basically a personality test, but it also gives information  
20 about intelligence, a person's intelligence, that is, can  
21 he make a coherent sentence, and so forth.

22 Q And what was the result of that test?

23 A I hope you will excuse me while I glance over  
24 this because I haven't seen these in six months or so.  
25 (Examining)

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1 jwjw 22

Briggs - direct

2 THE COURT: Take your time.

3 THE WITNESS: Okay.

4 A This refers to the response on the Incomplete  
5 Sentence response test for feelings of depression, con-  
6 fusion and inadequacy.7 Q Did you administer -- I'm sorry, if you haven't  
8 finished, continue on.9 A That is all. I had to answer that test for  
10 him also.11 The Gorham Proverb Test, Form I, is the next  
12 test reported on. And that is a test of how the person's  
13 thinking abilities are organized; can they think abstractly  
14 or do they only tend to think concretely.

15 \* person --

16 Q Okay.

17 A Do you want me to explain?

18 Q I would like -- those two words, very abstractly,  
19 I would like to get the meaning on the record as best we  
20 can.21 A Well, abstract thinking is when a person is  
22 able to take an element from an experience and apply it  
23 to another experience. For example, if you went out and  
24 turned on your car and it wouldn't start and you looked  
25 at the gas gauge and it was empty and everything else

1 jwjk 23 Briggs - direct  
2 seemed to be in order, if you were able to think abstractly  
3 you would think having a gas gauge which shows empty and  
4 not being able to start the car might have something to  
5 do with each other, and the next time that your gas gauge  
6 would be approaching empty you would abstract from this  
7 previous experience and tend to think, well, maybe it  
8 is time to get gas or my car won't start.

9                   A person who thinks only concretely might be  
10                  more likely to let his gas run out over and over again,  
11                  not being able to draw a connection between one experience  
12                  and another. Very few people think abstractly all the  
13                  time or concretely all the time but a schizophrenic  
14                  person tends to think more concretely than normal and  
15                  Mr. Fontanez' thinking on this form proverb test was  
16                  concrete in nature.

17 Q You don't have an example that you can extract  
18 from that test of a couple of questions and a couple of  
19 answers.

20                   A         Well, on many of them he replied, "I don't  
21                   know," or he would say, "That is right, that is true."

22 Q Can you read, give us a sampling of the  
23 questions.

24 A Okay. A sample would be, "Don't swap horses  
25 when crossing stream."

951

1 jwjw 24

Briggs - direct

2 He replied, "I don't know."

3 I paraphrased.

4 There is another form of this test where the  
5 person reads the proverb and then chooses another sentence  
6 that means the same thing, that is an interpretation,  
7 an abstract interpretation. Mr. Fontanez couldn't do that.

8 That is the one we preferred to give him.

9 He couldn't do it, because he couldn't read enough to  
10 do it. So I had to read this to him and write his answer.11 One of them he says -- one of the proverbs,  
12 "The used key is always right."13 Now we would answer -- abstract thinking  
14 would tend to say, "The used key is always right." What  
15 that really means if you keep something in use it would  
16 be in good condition, whatever.

17 But he said, "If you polish it I guess it is."

18 "Barking dogs seldom bite."

19 He said, "I love dogs. What about the quiet  
20 ones. My dog doesn't bark, but he bites."

21 It is typical of concrete thinking.

22 Q As a result of this particular test, were  
23 you able to draw any conclusion?24 A Yes, this is concrete type of thinking. Not  
25 all of them were that way, but the majority of them were.

1 jwjw 25

Briggs - direct

2 Very few people answer all these items concretely, but  
3 he did much more than normal.

4 Q Did you administer any other test?

5 A The House-Tree-Person Test.

6 That is a test where the person is asked to  
7 draw a house, a tree and a person. It is a test of  
8 intelligence to some extent and personality to some  
9 extent, but chiefly it is a test of if the person's  
10 thinking is quite disturbed he tends to schizophrenia,  
11 and also neurological functioning, that is eye-hand  
12 coordination and so forth.

13 Also there is a question on the front of the  
14 test which says, "Who are you?"

15 And he made a reply. They are asked to say  
16 as much or as little as they like, whatever they want to  
17 say about themselves. He made a reply and I wrote it down.

18 And as a result of this test it indicates  
19 confusion, feeling of depression, feeling of inadequacy,  
20 neurological difficulties. It looks like there was  
21 something wrong with his neurological, nervous system,  
22 something like a neurological impairment.

23 Q Could you tell us the way he performed in  
24 response to this test that indicated that to you?

25 A Well, a person with an I.Q. as low as Mr.

1 jwjjw 26

Briggs - direct

2 Fontanez would not give very good drawings especially if  
3 they were mentally retarded.

4 In addition, however, there were some typical  
5 kinds of mistakes that he made. It is hard to see from  
6 a distance what they are. That is the drawing of a person.  
7 If you look at it closely there are a number of mistakes  
8 that is typical of people who are quite emotionally  
9 disturbed and also some mistakes typical to people who  
10 have something wrong with their nervous system, something  
11 wrong with the brain --

12 Q I wonder if you could let the jury see that.

13 MR. REISCH: This is in evidence, your Honor,  
14 part of Defendant's D, I believe.

15 THE COURT: All right, give it to the Forelady.  
16 It can be passed down the front row of the jury and then  
17 down the second row and then the two alternate jurors.

18 All right, let's go ahead.

19 A Someone -- an adult would not -- the normal  
20 adult would not draw a picture like that. That is an  
21 abnormal sort of drawing.

22 Q Can you tell us in what ways it is abnormal?

23 A Well, it is not really like telling to go into  
24 it detail by detail because we take the thing as a whole.

25 Q So as a whole it indicated what to you?

1 jwjw 27                    Briggs - direct

2            A    That he had severe personality problems and  
3            that he had neurological problems also.

4            Q    Did you have occasion to administer any other  
5            examination?

6            A    The Bender-Visual Motor Gestalt Test.

7            Q    That is a long --

8            A    Bender-Visual Motor Gestalt Test.

9            Q    What does that test consist of?

10          A    It was originally developed as an intelligence  
11         test and used partly for that. It is also used for  
12         neurological -- to test neurological impairment. And  
13         his Bender-Gestalt drawings were of poor quality and  
14         suggest the possibility of neurological dysfunction.

15           Again he made mistakes that are typical for  
16         people who have some sort of a problem with their nervous  
17         system.

18          Q    Incidentally, during the course of your  
19         employment as a clinical psychologist and psychometrist  
20         at Springfield, how many of these tests did you have  
21         occasion to administer?

22          A    That is what I was just looking through.  
23         These were administered April 4, 1975. Then I probably  
24         used --

25          Q    I don't mean only to Mr. Fontanez. I mean to

[REDACTED]

1 jwjw 28 Briggs - direct

2 the population as a whole.

3 A Oh, how many of these did I --

4 Q Approximately.

5 A Well, for two and a half years and I probably  
6 gave an average of about a dozen, fifteen a week, something  
7 like that.

8 Q That would be in excess --

9 A Of course, I have done the same thing in other  
10 jobs before.

11 Q You mentioned that you were a counselor at a  
12 school at one time.

13 A County Guidance Clinic.

14 Q And did you have some occasion to administer  
15 these tests on that job?

16 A Yes, those also. Yes, I see in August I gave  
17 him -- I gave him some other psychological tests; August  
18 19, 1975.

19 Q And what test did you give him then?

20 A I gave him -- again I gave him the Proverb  
21 Test. I gave him the Bender-Visual Motor Gestalt Test  
22 I gave him the Rotter and Incomplete Sentence Test, the  
23 House-Tree-Person Test and the Rorschack Test.

24 Q As a result of these tests and responses  
25 thereto, did you have occasion to draw conclusions concerning

[REDACTED]

1 jwjw 29

Briggs - direct

2 first the mental age and/or state of retardation of Mr.  
3 Fontanez?

4 A In the second group of tests, or the first  
5 group of tests?

6 Q All of them.

7 A Well, I don't see a report here from August.  
8 I think it is in one of the other folders. It looks to  
9 me glancing through this like he had deteriorated in  
10 August and performed worse than he did in April.

11 His Bender drawings are much worse and the  
12 House-Tree-Person drawing isn't as good. It looks like  
13 he had gotten worse during that time.

14 Q During the course of your contact with Mr.  
15 Fontanez, did you have occasion to use in aiding any  
16 diagnosis you might make any of the abstracts of treat-  
17 ment or diagnoses that the Veteran's Administration either  
18 in-patient or out-patient may have supplied to the  
19 hospital?

20 A Yes, I did. In the interest of finishing up  
21 the test, if you want me to say anything about the Rorschack  
22 Ink Blot Test.

23 Q Sure.

24 A I also gave the Porschack Ink Blot Test both  
25 times and I say his responses to the Rorschack suggest a

1 jw jw 30

E. Riggs - direct

lack of emotional response to the environment and pre-  
occupation with his own feelings. That is, they look  
like what a person would give if he was withdrawn from his  
environment. He was preoccupied with his own thoughts  
and his own feelings.

7 Q The next question is, whether or not as a  
8 basis for drawing your conclusion you used any of the  
9 materials supplied by the Veteran's Administration?

10           A       Well, when I wrote this report in April 4,  
11           it says there was little information in Mr. Fontanez'  
12           files so that doesn't sound like that I -- I say he claims  
13           frequent V.A. hospitalizations with record of discipline  
14           sent for but not arrived at the medical center as yet,  
15           so in April I didn't have those.

16 Q Is there anything -- is there a further  
17 examination of yours?

18 A Well, I think that you have a report of a  
19 later one. I dont' see it in here.

20 MR. REISCH: If I may have a moment, your  
21 Honor?

22 THE COURT: Do we need these later ones? This  
23 is a psychological test as I understand it. And once  
24 having given the test is there anything more that the  
25 witness can add?

[259]

1 jwjw 31

Briggs - direct

2 MR. REISCH: No, it is only that her file  
3 diagnosis, the later one, may have rested upon the V.A.  
4 reports which would have arrived at the institution.

5 THE COURT: Yes, but I don't understand  
6 that she is qualified to go beyond the tests that she  
7 administered whenever it was, April 1975. We are getting  
8 down toward the end of 1975.

9 MR. REISCH: She did administer a test again  
10 in August of 1975 and made a report based upon those tests.

11 THE COURT: I do not myself see the relevancy  
12 of it. But, all right, go ahead.

13 MR. REISCH: I think it is possible that Dr.  
14 Goldstein has it.

15 Q In any event, based upon all of this, is it  
16 possible for you to come to the conclusion concerning  
17 whether or not in 1974, on October 17th or 18th, Mr. Rafael  
18 Fontanez was suffering from any mental disease or defect?

19 A Yes.

20 Q What is your opinion?

21 A Well, it was my opinion that he had -- he was  
22 suffering from chronic schizophrenia and also neurological  
23 impairment.

24 Q When you say "neurological impairment", could  
25 you define that for us, please?

1 jwjw 32

Briggs - direct

2 A Well, for him to perform the way he did on  
3 the test there would have been -- had to be something  
4 abnormal about the way his nervous system was functioning,  
5 that is his brain. He was not operating properly, I  
6 guess you could put it.

7 And my decision on that, his mental illness,  
8 was based on the testing and then also on my observation  
9 of his behavior. I had a great deal of opportunity to  
10 observe him being there three days a week.

11 THE COURT: Of course, you are not a medical  
12 doctor.

13 THE WITNESS: But by a psychologist.

14 THE COURT: And you are not a psychologist?

15 THE WITNESS: The psychologist there has the  
16 duty also of observing.

17 THE COURT: I do not see how this witness is  
18 qualified to express an opinion.

19 MR. REISCH: She is qualified enough to  
20 have the government include her opinions and reports as  
21 the basis --

22 THE COURT: That does not mean that she is  
23 qualified in this court.

24 MR. REISCH: I concede that, your Honor.

25 THE COURT: It does not have that meaning in

1 jwjw 33

Briggs - direct

2 the slightest.

3 MR. REISCH: Well, I went over her testimony,  
4 her experience initially, the fact that she has worked  
5 as a clinical psychologist for the federal government in  
6 their institution for two and a half years, that she at  
7 the same time taught psychology at a university nearby,  
8 that she was a clinical psychologist for the school  
9 district.

10 THE COURT: All right. Go ahead.

11 MR. REISCH: The Court can come to a conclusion  
12 as to her qualifications to give as an opinion in this  
13 regard. If it has concluded it will not permit her to  
14 do so, I ask the Court to do that now.

15 THE COURT: There is no objection, so she can  
16 go ahead and express an opinion.

17 Q What was your opinion of his mental  
18 condition on October 17th, 1974?

19 MR. WOHL: I will object then, your Honor.

20 THE COURT: Sustained.

d take 3pm 21

22

23

24

25

[REDACTED]

1 slbr 1 Briggs-direct

1/1 pm 2 Q What was your opinion as to his psychological  
3 condition on the 17th of October, 1975?

4 MR.WOHL: I will object.

5 THE COURT: Sustained.

6 MR. REISCH: I just wonder if the Court can  
7 explicitly rule on the basis of sustaining these objections  
8 that it is finding this witness unqualified to give ti  
9 give opinions as to psychological diaqnoses.

10 THE COURT: Well, the psychological diagnosis  
11 hasn't anythingto do with it. We have read the definition  
12 -- I have already read it, and you have used it in questions  
13 to Dr. Goldstein.

14 MR.REISCH: Well, I would like to ask this question  
15 This is preliminary to that. I don't know if the Court  
16 will permit me to go on --

17 THE COURT: No, I don't think I will. I don't  
18 believe that she can express an opinion as to a mental  
19 disease or defect. I don't think she is qualified to do  
20 do. She is obviously very able in her field, and I have  
21 permitted her to tell what she did and the results what she  
22 did, and on the basis of what qualified psychiatrists have  
23 testified you can make arguments to the jury based on that --

24 MR. REISCH: I understand.

25 THE COURT: -- but I don't say that I can permit

1 slbr 2 Briggs-direct App. 40

2 her to express an opinion about a medical disease or defect.

3 MR. REISCH: So the Court is ruling that a  
4 clinical psychologist doesn't have --

5 THE COURT: I am ruling that this witness is  
6 not going to express the opinions asked for by your questions.  
7 That's all I am ruling.

8 MR. REISCH: I have no further questions.

9 THE COURT: All right, Mr. Wohl?

10 MR. WOHL: May we have a short recess at this  
11 time, your Honor? Would it be convenient?

12 THE COURT: Well, it is a little after 3:30.  
13 I think probably we should take a break.

14 Madam Foreman and ladies and gentlemen of the  
15 jury, you may retire for a few minutes.

16 (Recess.)

17 THE COURT: All right, if you please,  
18 Mr. Clerk, will you bring in the jury?

19 (The jury entered the courtroom.)

20 THE COURT: All right, if you please.

21 CROSS EXAMINATION

22 BY MR. WOHL:

23 Q Is it Miss or Mrs. Briggs?

24 A Mrs.

25 Q Mrs. Briggs?

1 slbr 3 Briggs-cross [ ]

2 A Yes.

3 Q When did you do this Rorschach Inkblot test  
4 did you score the test?

5 A Yes, I did.

6 Q What method did you use to score the test?

7 A Klopfer.

8 Q What?

9 A Klopfer, K-l-o-p-f-e-r.

10 Q Can you tell us what score Mr. Fontanez got?

11 A I don't have the test.

12 MR. REISCH: Was it D or E?

13 THE WITNESS: D.

14 There wouldn't be any sort of a quantitative  
15 score on this; I mean, it wouldn't come out with a number,  
16 but as I said, it showed that he was withdrawn from the  
17 environment.

18 Q Isn't there a numerical score method for these  
19 tests?

20 A Yes, there is, but at the Medical Center I don't  
21 have time to use that. It takes quite a time.

22 Q And that would be a more thorough way of  
23 evaluating the results of the test, is that right?

24 A Well, that's a matter of opinion; that's a  
25 matter of controversy in psychology whether it is more

1 slbr 4

Briggs-cross

App. 42

2 thorough or not.

3 Q It takes more time?

4 A It takes more time. It doesn't mean it's  
5 better.6 Q In your opinion is it better to use this  
7 more time consuming method of scoring?8 A No, I am very satisfied with the Klopfer  
9 non-quantitative method.10 Q Would it be correct to say that you worked  
11 at the Springfield Medical Center on a contract?

12 A Yes.

13 Q And is it correct to say that that contract  
14 required you to administer tests and make observations of  
15 patients?

16 A Yes.

17 Q Is it also correct that that contract did not  
18 require you to diagnose mental defects and diseases in the  
19 patients?20 A What I was required to do was up to whoever  
21 was in charge of the forensic unit at the time asked me  
22 to do. Sometimes I was asked to make diagnoses; sometimes  
23 I wasn't.24 Q Who was in charge of the forensic unit when you  
25 were there?

[ ]

1 slbr 5 Briggs-cross

2 A Well, different people at different times.

3 Q Who were the different people?

4 A Well, Dr. Eardley was in charge when I began,  
5 and then Pawnee Creeson, and since last July Dr. Eardley was  
6 again in charge.

7 Q He was your supervisor?

8 A Yes.

9 Q And he is a psychiatrist, is that right?

10 A Yes.

11 Q And was it your normal practice to report your  
12 findings to Dr. Eardley?

13 A Yes.

14 Q And in the normal course of events Dr. Eardley  
15 would consider your findings; would make a diagnosis of  
16 some sort, is that right?

17 A Sometimes he asked me to make a diagnosis  
18 first.

19 Q When did he look over your diagnosis and either  
20 approve it or disapprove it?

21 A Well, not approve it or disapprove it. He  
22 would agree with it or not agree with it.

23 Q Is it correct that you are not licensed to  
24 practice medicine?

25 A No, I am not licensed to practice medicine.

1 slbr 6 Briggs-cross-redirect

2 Q Are you employed at the present time?

3 A No. I am in Minneapolis, Minnesota. My  
4 husband has asked me not to work for a few months.

5 MR. WOHL: I have no further questions, your  
6 Honor.

7 THE COURT: All right, anything else, Mr.  
8 Reisch?

9 MR. REISCH: Just briefly.

10 REDIRECT EXAMINATION

11 BY MR. REISCH:

12 Q During the course of your interviews on testing  
13 of Mr. Fontanez over the period he was at Springfield,  
14 approximately how often and for how long duration did you  
15 speak to him?

16 A I was there about three days a week and I saw  
17 him virtually every day I was there.

18 Q Was this a formal, face-to-face or informal  
19 setting, or both?

20 A Mainly informal. On some occasions I was  
21 testing him and interviewing him formally, but most of the  
22 time it was informal. I was chatting with him. Where  
23 I did my group testing was on his ward -- there was a large  
24 room there on his ward, on the ward where he lived -- so  
25 he was around, and usually he would come and sit and chat

1 slbr 7

Briqgs-redirect

2 with me on occasions.

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3 Q Were there occasions when he didn't know that  
4 you observed him without his knowledge?

5 A Yes.

6 MR. WOHL: Objection. There is no way that the  
7 witness could know that Mr. Fontanez knew.

8 THE COURT: Well, I will treat it as going to  
9 the weight of it. You are absolutely right, Mr. Wohl.

10 Q Were there occasions when you tried to have  
11 Mr. Fontanez not know that you were observing him?

12 A I didn't particular make an effort to, but  
13 there were a number of times that it appeared to me that he  
14 didn't know; I didn't see that there was any way that he  
15 could see that I was around.

16 Q In the course of your entire experience with  
17 Mr. Fontanez did you ever come to the conclusion that he  
18 was feigning or simulating any of the symptoms which you  
19 observed and recorded?

20 A No.

21 MR. WOHL: Objection.

22 THE COURT: I will permit it.

23 MR. REISCH: I believe she answered that al-  
24 ready.

25 THE COURT: Yes, she said no.

1 slbr 8

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2 R. REISCH: That is all. I have no further  
3 questions.

4 THE COURT: Is there anything else?

5 MR. WOHL: No, your Honor.

6 THE COURT: Thank you very much. You may step  
7 down.

8 (Witness excused.)

9 THE COURT: All right?

10 MR. REISCH: Your Honor, that is the defendant's  
11 case.

12 THE COURT: Mr. Wohl, any rebuttal?

13 MR. WOHL: Yes, your Honor.

14 The government calls Eufemio Vargas.

15 EUFEMIO VARGAS, a witness called on behalf  
16 of the government in rebuttal, having been first  
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WOHL:

20 Q Mr. Vargas, do you know Rafael Fontanez?

21 A Yes, I do.

22 Q Do you see him in court today?

23 A Yes.

24 Q Will you point to him, please?

25 A The gentleman right there (indicating).

